

## **Statement**

### **Before the Surface Transportation Subcommittee Senate Commerce Committee**

**March 2, 1999**

**By**

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Congress recognized during the era of the Depression that two things were necessary in the railroad industry. First, in order to save railroads from bankruptcy they needed a special process that would allow struggling railroads to merge. Second, Congress also recognized that workers should not have to pay the entire price for the merger and that they should share in the benefits and efficiencies of merger through protection.

In 1980 the Staggers Act was passed. This Act revolutionized the railroad industry by changing the merger process. UTU reached out with an open hand and formed a partnership with rail management to pass the Staggers Act. UTU lobbied hand in hand with management to accomplish this momentous event.

Since the passage of the Staggers Act, we have seen a significant growth in rail traffic, which has created a residual benefit for railroad stockholders. We have seen a decrease in rail transportation rates, which is a significant benefit for railroad shippers. What has happened to the railroad workers, the railroads' allies from 1980? They have become the most productive railroad workers in the world. This fact does not come from a study paid for by a labor union and conducted by a liberal pro-labor think tank. No, these facts come from both from the Association of American Railroads and the World Bank.

Until the last round of negotiations in 1996, railroad workers' wages and benefits essentially remained at status quo, barely keeping up with inflation. But the workers have not shared in the benefits of their productivity. UTU has seen the number of jobs in the industry decrease from over 500,000 to just over 200,000. The percentage of railroad dollars going to labor has been reduced from a little over one half to about one third.

Railroads and their shippers have done better because UTU formed its alliance with rail management in 1980 based on the promise of mutual benefit. However, as soon as the railroads' labor relations departments became involved, they essentially attacked their former allies, the railroad workers. The money that has gone to the railroads' bottom line and to new capitalization in the railroad industry did not come from smarter or better managers. It came through the desecration of their allies' jobs. The increase in the

industry's bottom line was borne on the backs of loyal employees who are now no longer a part of the industry that they helped to build. Not only were hundreds of thousands of jobs lost, those railroad workers that were left have essentially only kept up with inflation and have received little or no benefit from their productivity. We in labor have been promised in the market place that if we become more productive we would share in the benefits of our productivity -- this is not true in the railroad industry. The shippers and stockholders have been the benefactors not the workers.

This attack on UTU by rail management often times took place at the Interstate Commerce Commission (ICC), whose functions now fall under the umbrella of the Surface Transportation Board (STB). It started with the leadership of Heather Gradison at the ICC. Ms. Gradison began making interpretations and regulations that attacked the most productive railroad workers in the world. Much has been said about labor protections. Rail workers do not benefit from mergers, as do the stockholders and the shippers. The only thing that labor protection does is, at best, is maintain the status quo as to the standard of living for railroad workers for a limited period of time. Another reason that rail workers never benefit directly from mergers is that railroad mergers always result in fewer jobs. Because of a process in place at the Surface Transportation Board, which we call "cram down," not only do we lose jobs, we also lose pay, working conditions and benefits.

For UTU to collect any of the legislatively mandated benefits we must directly prove that they are entitled to such benefits. Many times that is an impossible feat. The process lends itself to the progression of unlimited and radical changes to collectively bargained agreements. In other words, UTU and rail management sign an agreement, much as people do when they buy or sell a house, car or make a bank loan. However, if rail management does not like the deal, it merely applies at the Surface Transportation Board, through the merger procedure process, to change collectively bargained agreements. To us, this is like closing on your mortgage note after many weeks of negotiations, and having the bank call two days later telling you they plan to raise your interest rate by two percent. It often doesn't sound like much at the time, but the long-term implications are devastating. The Surface Transportation Board uses an arbitration process and all of the standards in the arbitration process favor management. If labor ever wins in the process, the greatest possible victory is the status quo. We win by keeping what was bilaterally agreed to in the first place. We can gain no new benefits by going through this process. In effect, management has nothing to lose in initiating the process and pursuing it to its conclusion. The system begs management to reopen their completed negotiations.

The next failure of this process is that it is open and available to the carriers forever. It begins at the time of the merger and it never expires. No matter how many collective bargaining agreements are made in the years following the ICC or now the STB decision, the merger procedure is still available to the carriers. The railroads have even gone back as far as 25 years and used the merger procedure to change the contracts that have been negotiated during the previous 25 years. Of course almost none of the employees that were there at the time of the merger are still employed. This always gives the railroads another bite at the apple. We have one instance where the merger procedure was used to change the agreement on the Western Maryland to the one governing the

Baltimore and Ohio, even though the carriers had merged into the CSX many years before. Every major railroad today is the product of numerous mergers, and they use the merger procedure at the ICC and now the STB to sometimes undo what they have been required to do in a previous merger involving the same employees. Agreements entered into voluntarily as a result of one merger are eliminated in the merger process in a subsequent merger involving the same people. I know of no other place in the federal government in which you can fill out an application and have legally binding contracts nullified. This process is not available to UTU. For UTU, it is strictly a one way downward spiraling process.

Because of the events involving the Staggers Act and how rail management has treated us, their former allies, there is a great deal of mistrust in entering into any partnership with rail management. This situation must be changed to bring equity to the system. If UTU and rail management are going to once again form the types of partnerships and relationships that will be necessary for the success of an evolving 21<sup>st</sup> century industry.

One of the advantages of having an industry that has been in business many years is that there is a history to reflect upon and learn from. Hopefully, by reviewing the history, we can avoid making the same or similar mistakes. I am an engineer from the former Southern Pacific Railroad which, because of the latest merger, is now a part of the Union Pacific. When I came into the industry there were six railroads serving the Houston Gulf Coast. There was the Chicago Burlington and Quincy that is now part of the Burlington Northern. There was the Santa Fe, which is also now a portion of the Burlington Northern. There was the Missouri Pacific and the Southern Pacific who are now part of the Union Pacific. Also the Katy which, while teetering on the brink of bankruptcy, merged with the Union Pacific. Houston was also served by the Rock Island, which was broken up, and little of it still exists. And that which still exists ended up in both the Burlington Northern, the UP and dozens of short lines. The recent melt down on the Houston Gulf Coast was not the first one to occur during my railroad career, it is actually the 3<sup>rd</sup>. When the first one occurred, the six above railroads were all providing competition. You could take every one of those railroads listed and route your cars to either St. Louis or Kansas City. You also had a great deal of competition to the other gateways.

I remember working very closely with Senator Roger Jenson, many Iowa farmers and co-ops looking for ways to improve the average 32-day turnaround on grain trains from Iowa to Houston and back. Houston was a mess and every railroad was gridlocked. A few years later, and after a couple of mergers, Houston went through a very similar situation. Last year it happened again.

As I mentioned before, I hold seniority as an engineer on an area of railroad that has been stressed. I don't need to read someone's report about what happened. I don't need to see someone's movie, you see I had a part in the play. I was part of the first show and then had a part in the first sequel. I did not have a part in the second sequel. What caused the melt down in Texas was the same all three times -- a lack of infrastructure. Nobody wanted to invest the capital to extend the infrastructure in the Gulf Coast because there was not enough traffic when divided among several railroads. Most of the railroads in Texas are single track. A single-track railroad is nothing more than an alternating one

way street between sidings. Having more competition means we will see more railroads operating on the same amount of track, which only contributes to additional congestion. It will have an exact opposite effect of what some are seeking. Take I-95 for example. During rush hour, it reaches peak volume, much as single track does with a train on it. There is no more room because there are no more lanes. Nothing could be gained on I-95 by building more on-ramps. Similarly, nothing can be gained by granting access by other railroads to a system that has already reached peak volume.

In order to address the congestion problem on the Gulf Coast, it will be necessary for the railroads to have the BNSF and UP's BMW employees lay rail and continue to maintain existing track structure rather than furlough track forces. Once these assets are in place, they are truly fixed assets. They are different from locomotives and rolling stock that can be moved from place to place. Both the Burlington Northern and the Union Pacific have made commitments to lay rail on the Gulf Coast area. This will expand capacity. If any access is allowed to other carriers who are not committed to expanding capacity, it will only add to the congestion. No matter how many railroads you have in the Gulf Coast area, if capacity is not improved, congestion is only increased. Railroads are very different from trucks, airlines and public utilities. Where there is excess capacity, where competition can be brought with a minimum capital expenditure and then as the business grows capacity is added. In the case on the railroad in the Gulf Coast, the system is at capacity many times. We saw several deaths trying to put the Union Pacific and the Southern Pacific together, with the Kansas City Southern also included in the operation, while the two carriers were trying to merge. Needless to say, there are truly significant safety issues involved in the access question.

UTU has never been one to beat about the bush. The real problem involving congestion is on its way to being solved. Many new people are being hired, locomotives and rolling stock are being purchased and rail is being laid. Railroads today are making money but they are not the darlings of Wall Street. Some analysts view railroads as basically a good investment -- that is some railroads. No analyst suggests that they are a great investment. Opening up railroads to competition and dividing their traffic base will merely lead to the cancellation of the solution, which is adding to the capacity. After our experience with Conrail, Milwaukee Road, Rock Island, etc., we learned that more railroads and more competition actually leads to fewer miles of railroad track, more bankruptcy and more abandonments. Instead of the shippers having a strong viable railroad system, history has proven that you end up with just the opposite. I believe that some shippers are very narrow-minded. They have not studied history and they are merely looking for a way of getting to lower rates. They want to attack the railroads' bottom line to enhance their bottom line and call it access and competition. Most of the shippers are looked on more favorably by Wall Street than the railroads are.

You may hear the argument by some shippers that the railroad systems should be opened for competition or methods that lead to rates suppression and potential bankruptcy. Would those same shippers, in the name of competition, develop new patents, put dollars into production or a new chemical and then open up their patents so that their railroads could have access to those patents? And then compete with the people who had poured billions of dollars into developing the production provided by the patent? Maybe this could be a good trade, give the shippers some sort of access in the name of

competition to the rail lines and then give the rail lines access to the shippers' patents so that both can compete equally. But of course if you do that, I want the workers to share in the profits and to be given lifetime protection.

It is time for the workers to benefit. Rail labor has lost almost 300,000 jobs. Some have maintained a status quo standard of living, while others in rail labor have suffered real wage losses. Our partnership with the railroad industry has so far allowed too little or no benefit from this deregulated industry. Enough for the stockholders, enough for the shippers- now is the time to reward those who do the work.